

FILED
JAMES SUMINI
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Louis Merriweather
Petitioner,

-vs-

Case No.1:02cv369
(Spiegel,S.J.;Hogan,MJ)

Tim Brunsman
Respondent,

Petitioner's Objection to Magistrate's
Supplemental Report and Recommendation

Now comes Petitioner and objects to Magistrate's supplemental R&R
for the following;

- ¶1 Respondent failed to either respond to Petitioner's opposition on
on[Magistrate's R&R of 2/28/06] with no service to Petitioner if
timely filed.
- ¶2 If in fact the Respondent failed to respond to Petitioner's
opposition, then there was no need for the Magistrate to
put forth his R&R, for if the Respondent did not contest
officially and timely, in fundamental fairness there was no
opposition and no need for a supplemental R&R.
- ¶3 The issue of uncertified sentencing transcript should not be
taken lightly for it's the principal argument of the Respondent
contesting petitioner claim of being denied the right to appeal.
- ¶4 Petitioner submitted a signed notized judgment from the Hamilton
County Clerk of Courts which affirms that petitioner was not
timely properly served notice of the appeal order/judgment of
June 18, 1997 until 5-14-03, therefore, Petitioner's conviction did
not become final until 2003 and the issue of time-barred is moot.
- ¶5 On the issue of procedural default in the state courts; In
Irwin v. Dep't of Veterans Affairs, 498 U.S. 89, 96; the court held
[W]e allowed equitable tolling in situations where the claimant
has actively pursued his judicial remedies by "filing defective"
pleading. Thus, the procedural default claim is being unfairly
applied in this case at bar.

Respectfully submitted:


Louis Merriweather

CERTIFICATE OF SERVICE

I, hereby certify that a correct copy of foregoing objections were mailed to Stuart A. Cole @ 130 E. Broad St. 17 Fl. Columbus, Ohio _____ on this 17th day of April, 2006 by per-paid first class mail.


Louis Merriweather